HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No. : 1734 of 2007.
Reserved on: 20.12.2007.
Decided on: 27.12.2007.

Shiv Shakti College of Advanced Study in Education and others ..... Petitioners.

Versus

State of Himachal Pradesh and others .....Respondents.

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.
The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting? No.

For the petitioners:	Mr.J.L. Bhardwaj, Advocate.
For respondent No.1:	Mr.M.S. Chandel, Advocate General, with Mr.R.M. Bisht, Deputy Advocate General.
For respondents No.2 & 3:	Mr.V.D. Khidta, Advocate.

Per V.K. Ahuja, J:

This judgment shall dispose of the present writ petition filed by the petitioners under Articles 226/227 of the Constitution of India praying therein for issuance of directions to the respondents to sponsor candidates for filling up the remaining vacant seats for B.Ed. Course imparted by the petitioners or in the alternative the petitioners may be permitted to fill up the remaining vacant seats on the basis of the marks obtained in the qualifying examination.

The brief facts of the case are that the petitioners are educational institutions imparting B.Ed. Course. Petitioner No.1-Institute was granted recognition for imparting B.Ed. Course by the National Council for Teachers

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Whether reporters of local newspapers may be allowed to see the judgment? Yes.

Education, (hereinafter to be referred as NCTE). The recognition was granted by the NCTE with an annual intake capacity of 100 students as per letter, dated 17.8.2006 w.e.f. the sessions 2006-07. It was further alleged that petitioners No.2 and 3 have been granted recognition to impart B.Ed. Course form the session 2007-08 and as per letter dated 4.8.2007 with intake capacity of 100 students annually. Petitioner No.1 further alleged that it was granted extension of provisional affiliation to run B.Ed. Course for the academic sessions 2007-08. It was alleged that respondent No.2 had conducted the entrance test for sponsoring the candidates to various colleges of education recognized by NCTE and affiliated to H.P. University but only a few candidates could qualify the entrance test. It was further alleged that despite conducting the entrance test, respondent No.2 University has sponsored only 75 candidates to petitioner No.1 College, 72 candidates to petitioner No.2 College and 59 candidates to petitioner No.3 College for imparting B.Ed. Course whereas the intake capacity for the aforesaid course granted by the NCTE was 100 students. Thus, the petitioners allege that there are many vacant seats and therefore, it is imperative for the University to sponsor the candidates equal to 85% seats to be filled in, for the petitioners-Institutions on the basis of qualifying marks as has been done in other courses or in the alternative, the petitioners be permitted to fill up the remaining vacant seats on the basis of merit obtained in the qualifying examination.

No separate reply was filed in this case. However, the learned counsel for respondents No.2 and 3, during the course of arguments, submitted that he had made a statement in the Court that the reply filed in CWP No.1778 of 2007 be read in this case also, which fact was not recorded in the order sheet. But since all these files were being taken together and this submission has been

made by the learned counsel for respondents No.2 and 3, the reply filed in CWP No.1778 of 2007 is being considered.

In the reply to the said writ petition, respondents No.2 and 3 admitted that the petitioner was entitled to admit 60 students. They further pleaded that they had conducted the counseling for MCA Course for petitioner-Institute firstly on 13th October, 2007 and secondly on 14th October, 2007, as per the criteria laid down in the Hand Book of Information. It was further submitted that the candidates were accordingly sponsored to the petitioner-Institute as per the merit of the entrance test. However, since the date-sheet for the conduct of examination of MCA Course 1st Semester has already been issued and the examination has to start w.e.f. 28th November, 2007, all the students admitted in the MCA Course are required to complete 75% lectures and the Institution had to conduct classes at least for 180 days. Thus, the students cannot be sponsored at this stage by having fresh entrance test or permitting the petitioner-Institute to admit the students. They also pleaded that in case of LL.B.Course, as per Ordinance 1.4 of the Himachal Pradesh University First Ordinances, 1973, the Vice Chancellor was entitled to allow admission to LL.B./B.A. LL.B. (Hons.) Courses to be made on academic merit and, therefore, same criteria cannot be applied for admission to MCA Course. The respondents in their reply also relied upon the judgment of this Court in Dreamz College case that no counseling can be permitted after the last date and no students can be admitted midstream even if the seats are unfilled.

We have heard the learned counsel for the parties and have gone through the pleadings of the parties also.

A perusal of the allegations made in the petition by the petitioners shows that a reference has been made to the decision of the Apex Court in

which it has been observed that one of the eligibility condition for admission in B.Ed. Course which was 35% marks in the entrance test has been waived of and no entrance test is required for giving admission to the outside students for admission in B.Ed. Course. It was further alleged in the petition that in pursuance of the judgment passed by the Apex Court, the University had advertised and had called for applications for 15% B.Ed. seats from the candidates belonging to the State other than the State of Himachal Pradesh for regular B.Ed. Course for the sessions 2007-08. Thus, it was submitted that the remaining seats in regard to quota for Himachali students should be allowed to be filled on similar basis considering the marks obtained in qualifying examination. A copy of the said judgment passed in Civil Appeal No.4640 of 2007, decided on October 4, 2007, was attached with the case file and the perusal of the same shows that the following directions were issued by their Lordships:

> "Considering the fact that under the circular issued on 5th September, 2007, no entrance test is required for giving admission to the outside students for admission to the B.Ed. course and considering the fact that there is sufficient time for completing the process of admission in the fifteen per cent quota to the outside students, we direct that the University shall issue an advertisement inviting applications from outside State students for admission to the B.Ed. course in various colleges affiliated to the University for imparting education for B.Ed. course by issuance of advertisement in the national news papers by 11th October, 2007. The last date to submit the forms would be 20th October, 2007. After the scrutiny of the admission forms, the University shall undertake counselling, which shall be completed by 30th October, 2007, and eligible students will be allocated different colleges for their admissions by 2nd November, 2007, so that the entire process of admission would be completed by that date."

It is, therefore, clear from a perusal of the above decision that the admission had to be completed by 30th October, 2007. But in the present case, that period is already over and no such directions can be given to the petitioners to issue fresh advertisements for admission for the academic session 2007-08 and, therefore, the prayer made by the petitioners for permission to admit students or for directions to the respondent to allow the petitioners to admit students on the basis of the marks obtained in qualifying examination cannot be permitted at this belated stage. The said plea can be considered by the University as and when made for the next academic session and, therefore, no relief can be given on the basis of the judgment of the Apex Court referred to above.

A Division Bench of this Court had considered the question of admissions in CWP No.1397 of 2007, titled Dreamz College of Pharmacy and another v. State of H.P. and others, decided on 14.9.2007, in which it was held that the academic calendar prepared by the University or any other educational institution has to be strictly adhered to and no midstream admissions can be permitted.

In view of above discussion, it is clear that it is too late to allow the petitioners to admit the students for entrance in B.Ed. course since minimum lectures are required to be completed and even in the time schedule fixed by the Apex Court, the admission process was to be completed by 30th October, 2007, which time is already over and no relief can be granted for this academic session.

There is no merit in the writ petition filed by the petitioners, which is dismissed accordingly. No order as to costs.

In view of the final disposal of the main petition, all the pending applications shall also stand disposed of.

(Deepak Gupta),
Judge.

(V.K. Ahuja),
Judge.

December 27, 2007. (TILAK)